STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH, WEDNESDAY, 15 MARCH 2000

Hon M.D. Nixon (Chairman)
Hon Ray Halligan
Hon Ken Travers

Committee met at 2.05pm.

BROWN, MR ADAM,
Project Manager, Acalinovich & Co,
189 St Georges Terrace,
Perth, examined:

LOGAN, MR PHILIP,
Licensed Valuer,
Lot 1587 Holmes Street,
Southern River, examined:

YEO, MR EVERARD,
Property Consultant,
13 Mumford Place,
Balcatta, examined:

READ, MRS ANN,
Lot 28 Birnam Road,
Canning Vale, examined:

CHAIR—I will ask each of you to make an opening statement and it could well be that after that opening statement members of the committee may ask you questions on it.

Mr Brown—As I said at the outset I am the spokesperson on behalf of a group of 14 landowners in Southern River. The land is bounded by Phoebe Street, Matison Street, Woongan Street and Passmore Street and is approximately 100 hectares in area. In 1993, the then Minister for Planning, Richard Lewis, initiated a metropolitan region scheme rezoning amendment to rezone that land and a very significant portion of Southern River from rural under the metropolitan region scheme to urban deferred. That rezoning went through and was intended to provide land for Perth's growth over the next 30 years and more. Subsequently, with the amendment being finalised and the land becoming urban deferred we formed a group of 14 landowners and began to pursue the rezoning under that land parcel under the City of Gosnells' local scheme. In order to do that we put in place engineering studies, town planning studies, geotechnical groundwater investigation, acoustic studies and other studies. We presented the City of Gosnells with a rezoning proposal in 1996. At its meeting at the time, the City of Gosnells resolved to initiate the amendment to rezone our land to urban residential and similar uses from its then rural zoning. The resolution of the council was subject to the release of the then draft Southern River structure plan, which had just been prepared by the Ministry for Planning. That document was imminent for release and at the last gasp the Western Australian Planning Commission decided not to release the document because Bushplan had become a policy that was being worked on by the various government agencies.

Bushplan was then released sometime in late December 1998, and during that period from 1995 until now we have not been able to go any further with the rezoning of that land. We have made a submission against Bushplan and also against the Southern River structure plan which is now being released for public comment. The basis of our objection to Bushplan is that some of the land identified under Bushplan is very significant from an environmental point of view, and in those cases the government intends to reserve it under the metropolitan region scheme and compensation would be paid for those parcels. In our case the land that is owned by our group has been severely degraded in some cases, is less degraded in other cases, and in both instances, as there are two Bushplan sites, the parcels are quite small and we do not believe that they are viable or ecologically sustainable over a long term. We have met a number of politicians and government agency officers on this issue over the past few years and we are presently hamstrung because Bushplan is as yet undetermined.

The structure plan which was released in October 1999 for this area recognised the Bushplan sites and that is now under comment by us and many other people. Our concern is that the structure plan embodies Bushplan as a document which is in draft form and is not yet endorsed by the government of Western Australia. The land that our group holds is not significant and the government does not intend to reserve it as regional parks and recreation and therefore does not intend to provide compensation for the land. The compensation mechanism that we have been told about informally is the structure plan. It will have infrastructure cost sharing mechanisms within it and this is a reasonably common practice over recent years whereby the owner of land, as the land is rezoned and redeveloped, pays to the local authority a sum on a per lot basis. For example, in Wanneroo I think the figure is approximately $4 000 per lot. The local authority uses that figure to put in a trust fund or some similar mechanism and then buys regional open space over a period of time. In this case the City of Gosnells would presumably use such a fund to purchase the land that is owned by our group. Our significant concern is that it would take many years, possibly 10, 15 or 20 years for the local government authority to accrue sufficient funds to be able to purchase the land that has been identified by Bushplan. We are talking potentially about a $10 million parcel within our landowners group and the Minister for Planning, Graham Kierath, over the past year or so has advised on a number of occasions that the government has set aside only $10 million per year for the next 10 years to acquire Bushplan sites, but not including our parcel of land. The problem we have then is one of equity. Our landowners are being asked to fund the conservation of remnant bushland for the good of the greater community without compensation from the greater community. On that basis we believe the government is taking away the rights of these owners to use, develop and enjoy their land as it currently stands. A significant concern at the end of all this is a recent letter I have seen from the Minister for Planning. He makes a statement in that letter which says —

> It is my expectation that Bushplan is able to find a viable outcome through the structure planning process to achieve a fair balance of equity for affected landowners, sustainable development and conservation.

My concern there is that the minister is alluding to a potential for Bushplan to never be finalised by the government of Western Australia so that it becomes a draft document that sits in limbo and all of the affected agencies — the Water Corporation, the Water and Rivers Commission, CALM, the EPA and so on — use the draft Bushplan as a means of identifying future planning studies. That means there is no possible compensation being offered by the

government to the landowners in question, and I am sure there are many other groups, who are being effectively blackmailed to hand over their land free of cost as part of the development stage, if and when they get to the subdivision proposal.

The other concern I have is that Bushplan does not identify the land concerned as public open space. For example, if this land is developed and subdivision approval is given, parts of the property might well be ceded to the crown as Bushplan sites, and on top of that the local authority would most likely require the normal 10 per cent contribution of public open space, free of charge, for the use and enjoyment of the new community for playing fields and so on. This is effectively double dipping: The government may well have forced the landowners to give some of their land for free simply by the passage of time.

As I said at the outset, we have now been working on this project for six years without moving further forward. Most of our landowner groups are retirees and this will eat significantly into their superannuation and that issue relates to land taxes, council rates and taxes. If Bushplan is not finalised and these people are not allowed to get on with the development that was foreshadowed by the then Minister for Planning, Richard Lewis, they may well be paying rates and taxes on land that is undevelopable for many years. Because the land has a Bushplan circle around each of the two parcels, the land is not viable for sale — nobody in their right mind would buy land that may potentially be undevelopable. That is the basis of our concerns and the bottom line is, I think, equity. We are not against the land being provided for the greater good of the community for public open space or remnant bushland over time but we are against the fact that the government is trying to reserve this land by stealth without fair and reasonable compensation for the owners and we would ask that the committee consider that and use its best endeavours to rectify what we consider a serious inequity.

CHAIR—Thank you. We are working to a tight timescale and I ask everybody to be brief and not cover any ground that someone else has covered. Mr Brown, is there anything you would like to table for the committee?

Mr Brown—I have a document showing the landowners group area and the two Bushplan sites in question and an extract from Bushplan itself also showing the land concerned and a copy of the draft Southern River, Forrestdale, Brookdale, Wungong structure plan identifying the same land. It is not clear on this black and white copy but the Bushplan sites are not shown as having any urban development potential and my comment there would be that it is drawing on Bushplan as a document that has no status and has not been formally approved by the government.

Hon DERRICK TOMLINSON—Could I just request that the letter from the Minister for Planning be tabled.

Mr Logan—I am a licensed real estate valuer by profession, specialising in compensation-related property matters. I consult for the government as well as private landowners and developers. I have lodged submissions protesting against Bushplan's current form on a number of grounds.

Bushplan deprives landowners' rights without paying due compensation. It adversely treats one man differently because he happens to have retained or respected remnant bush on his land. It is therefore discriminatory and prejudicial and could, in some instances, cause financial hardship. It does not necessarily protect the environment in the best way. It erodes landowner security as well as the security of a mortgagee. Bushplan has been protractive in its time scale and has created uncertainty about permitted land uses. While it is appreciated that there may be a genuine government and community preference to conserve bushland and wetlands, the means of doing so should be equitable for all concerned. The Ministry for Planning provides forward planning under the metropolitan region scheme and reserves land by designating it as 'parks and recreation'. This mechanism of planning has, in the past, protected the intended use of the land. Furthermore, land acquisition legislation and general government purchase practice has meant there has been a reasonable process whereby the landowner is paid compensation based on the land's alternate development potential. While the powers allowed under the Metropolitan Region Town Planning Scheme Act do not afford the landowner the same fairness of compensation that is provided under the land acquisition legislation, it is at least far better than controlling private land use and denying land rights and development opportunities through uncompensated restrictions. Surely bush conservation is for the whole community to enjoy as a public asset and amenity and therefore should be purchased by the community. It is a finite commodity and if, during one decade or so, there is a greater demand to protect environmental areas, then so be it. However, immediate financial restrictions on government should not change the basis by which the land is secured. Perhaps other provisions should be made to ensure funds are available to purchase land required for environmental protection schemes, rather than acquiring it by stealth. Rather than restricting the private landowners' rights and causing financial and emotional strain on those affected in the community, why not create a fund like the metropolitan regional improvement fund and collect community contributions by way of a small tax for the purposes of environmental conservation? I have been involved in valuing a considerable amount of property for the government's acquisition program under the metropolitan region scheme. While some current legal challenges have been lodged about how this scheme and valuation process should be interpreted, it is a far better measure of protecting land by reserve than placing restrictions on landowners who have purchased land in good faith, often under the guidance of forward planning by government, only to be told their superannuation land fund is eroded because the community wants to protect some bushland or wetland.

I purchased my superannuation land fund in Southern River in 1992 because the state government's 1990 early expansion policy indicated that land had the potential for urban development. The land was zoned 'urban' under the metropolitan region scheme in 1994 and I continued to pay rates and taxes on my investment with the knowledge that the whole area of Canning Vale-Southern River was developing and expanding for residential purposes. The metropolitan development program signalled this, as well as Metroplan. When developers began to purchase land around my parcel, I was able to refinance based on these prospects. However, a spanner was thrown into the works by the government in 1997 with the proposals to protect urban bushland regardless of land zonings. We are now in the year 2000, six years after my land was zoned urban, and we are in limbo. One has a right to be cynical and ask: How come government collects public taxes for forward planning and then spends more of taxpayers' money trying to change the rules? In the meantime landowners like myself have our investments threatened and our opportunities denied while we suffer from the inequities emanating from

Bushplan.

CHAIR—Previous evidence put before the committee indicated that the New South Wales government has legislation to protect property rights. Are you aware of that legislation? If so, do you have a view on it? It is something the committee wants to examine.

Mr Logan—I am not aware what the chairman is talking about. I did practise in New South Wales and am familiar with some of the planning complications. Western Australia has a land acquisition Act and New South Wales has a commonwealth Act that offers other benefits above some of the state legislation. The New South Wales legislation you are referring to may be new legislation I do not know of.

CHAIR—The committee was told the New South Wales government had amalgamated all its land acquisition Acts into one piece of legislation. It is probably good, as long as one size fits all. The government has incorporated 'just terms' compensation into that legislation. The committee will examine it, but I hoped you may have had some experience of that.

Mr Logan—The 'just terms' clause would have come from the commonwealth legislation.

Hon DERRICK TOMLINSON—Has any of the land you referred to as your 'superannuation land fund' been designated as bushland?

Mr Logan—All of it.

Hon DERRICK TOMLINSON—Do you know whether a planning control has been imposed upon that land?

Mr Logan—A planning control has not been imposed yet.

Hon DERRICK TOMLINSON—Do you anticipate it?

Mr Logan—Maybe not.

Mr Yeo—I am an independent property consultant. I do not represent any specific client today, but one of my major clients, the Salvation Army, is substantially affected by Bushplan through its Gosnells property. I will use specific properties to illustrate my points but I stress that I am not representing those owners in any way. I have spoken to a large number of people in the industry to understand how things are happening. Obviously, we are not here to say whether Bushplan per se is good or bad; we are here to talk about its effects on people. I will not go into the preamble I had prepared about the equity of owners as I think it has been adequately covered. I move to the point of how Bushplan is administered today. This issue gets to the heart of how some of the property owners are feeling and why they are feeling so aggrieved. Bushplan has been endorsed for public comment, but is being administered as law. Some of the points made to me are that the Ministry for Planning, the Department of Environmental Protection and local authorities are forcing owners to negotiate outcomes or not receive planning approvals. These are clear statements that are made to people. Terms such as 'negotiated planning solutions' are used; however, officers are stating to landowners that at least 30 to 35 per cent of land should be

set aside, free of cost, to satisfy the requirements. These suggestions are arbitrary at best. I believe this is conservation by blackmail, a process totally devoid of natural justice. To add insult to injury, after the 30 to 35 per cent of land is set aside to satisfy the 'negotiated planning solutions', a further 10 per cent of the balance of the land must be set aside to satisfy the normal requirement of public open space contribution at the time of subdivision. As was pointed out, it is a real double dip. My analysis indicates that the creation of Bushplan was not supported by public scientific analysis of each parcel of land included in the land. It appears to be an amalgam of suggestions by the old System 6 report from 1983, local authority scheme planning reports and aerial photographs. Generally, it appears that no inspections of the land have been made. The land may in fact be quite different from what is anticipated in the plan. The Ministry for Planning and the Department of Environmental Protection, the co-authors of Bushplan, are the parties determining the outcome of applications. This cannot be considered unbiased determination. A limited amount of land is classified for preservation as open space because of regional significance. If the land is classified as such, the Ministry for Planning would have to acquire it. Evidence suggests that officers are openly stating that land is deliberately being constrained in the development process to obtain the lower zoning of 'rural' to ensure that, should government acquire the land, it will be at the lowest possible price. This attitude prevails irrespective of the fact that the land may currently be zoned 'deferred urban' under the metropolitan region scheme and it is reasonably expected that the land could be developed for urban purposes. Generally, no compensation is payable under Bushplan as the land is not acquired or resumed for a stated public purpose. Landowners are forced to comply with totally unreasonable restrictions without recourse to an arbitration process.

It was announced that $100m would be spent over 10 years to acquire significant areas of land affected by the government plan. Such allowances were deemed normal for the purposes of the collection of the metropolitan region improvement tax, which is collected as part of the land tax system. Additional funds do not appear to have been allocated. An example of the inadequacy of such funding — and I am sure this particular case has been in the news and people understand it — is the Burns Beach estate in Kinross, which is owned by 650 small investors in a syndicate. The estate comprises 290 hectares of land, which would normally be expected to yield 3 000 lots. A 'negotiated planning solution' was agreed upon with the Ministry for Planning, which meant the syndicate would give up 40 per cent of the land, or 120 hectares, free of cost. However, it has just been announced that only 55 hectares is allowed to be developed. Therefore, 235 hectares has been quarantined from a private syndicate owner. The conservative estimate for the land alone is $80m.

The University of Western Australia was granted land in Shenton Park to fund education and it is expected it will be required to surrender 8.5 hectares of the site, with an estimated value of $17m. I spoke to an officer from LandCorp this morning who indicated the loss at its Forrestfield development is over $20m. To add insult to injury, the proponents of the 'negotiated planning solution' are also requiring the owner to prepare and implement a management strategy to conserve the quarantined land in perpetuity. This is all part of the process, of the things they are asked to do. I have no doubt land tax will continue to be charged on those holdings even though they have no commercial value because no mechanism exists to suddenly exempt the land from land tax charges. It appears to be a deliberate program of conservation by stealth and blackmail.

The message to proponents, as has been reported to me, is that they will not receive approvals

if they do not give up the land. Owners are told that if they do not come to a negotiated solution now, the lines will be drawn once the matter is approved by cabinet as policy and no changes will be possible. As there is no independent land or environment court and Bushplan is not law, there is no opportunity for an independent review of any decision. Bushplan has become an abuse of the planning process by removing the reasonable expectations of individual landowners and their democratic rights. It has been previously mentioned that if someone's land is blighted by Bushplan, it is likely to have no value; certainly no-one would buy it. Such an effect on the rights of an individual in a society which prides itself on democracy could be considered as potentially unconstitutional.

CHAIR—We are faced with an expanding metropolitan area and what used to be rural is becoming urbanised. What do you believe is the reasonable expectation of property owners? Assume you live somewhere in the area the committee inspected this morning and you bought that property 20 years ago when it was rural, before there was any suggestion it would be deferred urban. Presumably the land was bought on the basis of how many racehorses or cows it could run, and the purchaser paid a premium because it was close to the General Post Office. Over the period of time, the land has increased in value and gone through the process of changing from a cattle property to a quarter-acre block. How do you ascertain the reasonable expectation of value during that changeover period?

Mr Yeo—Land increases in value as its ability to change use occurs. If land can be used only as rural property or for rural pursuits, its value will be associated with rural pursuits. One must bear in mind that in recent years, the government has had a deliberate policy to ensure there are no land shortages with the massive increases in the price of land. That has been policy for some years. A number of omnibus amendments have gone through parliament to alter the metropolitan region scheme, which is a fair process of assessing whether the land is suitable for upgrading and rezoning. As the process of change from rural to deferred urban to urban to finally the approval to subdivide occurs, the land will increase and change in value.

Mr Logan—It is a function of location. It is possible to have rural-zoned property that is not 'rural' in terms of value. The land has inherent potential because of its location and proximity to other services and residential areas. Once the government does its forward planning, such as Metroplan or the urban expansion policy, the potential of the land is signalled to the marketplace even though it is rural-zoned land. In 1990 it had already been signalled that Southern River would be an urban corridor.

CHAIR—So any prudent property purchaser would expect to pay more than its commercial value as a dairy farm or a beef farm?

Mr Logan—Definitely.

CHAIR—So in effect the land would not go up in price like that?

Mr Logan—Some studies have been done whereby the value of rural land multiplies sixfold in the process to becoming a residential subdivision.

CHAIR—Could you give the committee a rough estimate of what it is worth? I do not know how big the lots are, but suppose somebody owned 100 acres 10 years ago, what would it have

been worth then?

Mr Logan—You would need to pinpoint where the land is.

CHAIR—What would have been the value in the rural area?

Mr Logan—Ten years ago the Sanctuary Waters estate sold at rural value and today it is almost completely a residential estate. It gallops along in time, it was simply a build-up of processes and services as zoning materialised.

Mr Brown—Sanctuary Waters, the Avenues, Brooklyn Greens and other similar estates in that area have sold for a range of prices. The developer of The Avenues paid $190 000 a hectare in 1994. More recently The Brooklyn Greens estate, which is a Taylor Woodrow (Australia) Pty Ltd development, has expanded and the developers paid almost $300 000 a hectare. That is an indication of the increase in the value of the land in Canning Vale. I am sure that over time, a similar increase will occur in Southern River, particularly as part of its development potential is linked to the future extension of the Tonkin Highway. When that occurs there will be a significant jump in value of the land.

Hon DERRICK TOMLINSON—Are the groundwater protection zones a complicating factor with any of the land you are representing? I acknowledge the value of Sanctuary Waters and so on but the Jandakot groundwater protection zone is not so far down the road. Is any of the land affected by Bushplan also affected by that?

Mr Brown—No.

Hon RAY HALLIGAN—Mr Yeo mentioned the land at Kinross — I think it is the land at Burns Beach itself — and that it appears they may be able to develop only 55 hectares of that very large tract of land, even though they were prepared to give up a substantial part of it at no cost. Is this part of the Bushplan dilemma or were issues, such as the local government authority, involved?

Mr Yeo—It would be wrong to say it was only a Bushplan issue. There are a number of other issues, related to its proximity to the coast and dune systems. However, it is interesting that the three local authorities that own the land to the north developed the waste transfer for rubbish disposal. The developers acquired that land with the expectation they would pay for the whole lot by being able to develop the balance. Much of their land is included in the Bushplan issue, but other issues are involved. It would be wrong to say it is purely Bushplan.

CHAIR—Mr Yeo earlier said there was no provision for arbitration. As I understand the planning process, somebody paints a picture with a broad brush and then gradually shrinks it down. At the end of the process it evolves into a final plan. The dilemma is that if you signal that you intend to do this or that people are worried unnecessarily, but if you wait until it is set in concrete, it is too late. I understand that with Bushplan, the developers of the plan took to it with a pretty good broad brush and are now asking people to submit proposals for other areas to be added to it. They are also providing an opportunity for those people to say if they believe a piece of land should not be in it. Could you put up an objection if your property is included in Bushplan

at this stage?

Mr Yeo—You can lodge a comment. I do not know that it has any particular validity as there is no process of assessment of those comments. I have lodged comments to Bushplan on behalf of clients. The difficulty is that people cannot sit around and wait for things to sort themselves out. They must pursue a planning process. As the normal processes occur and people seek approval for a subdivision, they are told that because the land is in Bushplan they will get it only if they are prepared to give certain parts up. The application will go no further until they negotiate. If, for instance, you lodged a subdivision plan and a planning approval was issued where one of the conditions is that X per cent is given up to comply with Bushplan, you have a right to appeal that decision. You could take it to the Town Planning Appeal Tribunal. However, many of these decisions are forced before the application will even be accepted for formal consideration and before it goes to the Western Australian Planning Commission for a determination, or at the rezoning process. There is no appeal in the early stages of the rezoning process. Property owners are caught between a rock and a hard place. If they want to sit there forever and wait for things to sort themselves out, they run the risk of missing out completely, so they pursue it. They make commercial judgments. That is what is happening. The problem is that the process is fundamentally flawed. If the land is so significant that it should be preserved for the common good, then it is perfectly reasonable that it is preserved. It is also perfectly reasonable for a particular owner not to have to pay the costs, but that the community pays for it through one means or another. That is the heart of the issue: it is projected on the wrong premise. Bushplan is projected on the basis that people will simply give up the land because it has been included in a plan.

Mrs Read—I am here today because I have experienced the distress of having to fight the government for my own property. During the process of a scheme amendment that was to rezone our area from rural to residential, decisions were made by government departments and the local authority to reserve my property for conservation. These decisions were made without any notification to or involvement of the landowners concerned. It is not a large property, just three and three quarter acres, but it is ours and proudly paid for after years of hard work. Our only expectation from this scheme amendment was that we would be able to sell our property in due course and move on.

I cannot adequately describe how horrified and devastated we were after living in Canning Vale for 17 years, to be told that the conservation area, which had already been agreed to and signed off by the Minister for the Environment before we even found out what was planned, took up 90 per cent of our property and that we would be expected to give up this amount for nothing. I can only tell the committee that the deep pain and anger we felt when we realised that this meant that our 30 years of hard work was all for nothing was an experience I would not wish on anyone. The government departments involved in this scheme, the Ministry for Planning, the Department of Environmental Protection, the Water and Rivers Commission and the City of Gosnells, did not seem to care that their decision meant that we would never be able to sell our property or that they had forced us to revise the rest of our lives because now we had no choice. No-one would buy a property that had no development potential or was taken up by non-compensatable reserve. Indeed, we were told by developers who were buying into the area that no-one would ever buy our property.

There was nothing in the Environmental Review to alert us to what was about to happen. Neither the Environmental Protection Authority in its instructions, nor the Water and Rivers Commission in its comments on the amendment made any reference to our property as a wetland, despite the fact that, without our knowledge, we had been identified on aerial photographs as early as 1993 and placed on the Wetland Atlas in 1996. The environmental review acknowledged that the scheme amendment area was over 60 per cent wetlands and the small areas of damplands and sumplands which had been identified, contributed little in environmental terms. Despite the Minister for the Environment's condition statement calling for a case-by-case investigation of these areas, our properties were included as conservation category wetlands without further scientific investigation. A cursory inspection from the road, without our knowledge, was all that was required to devastate our future plans, totally devalue our property and launch us into six months of anguish as we fought to rectify what the government had done so easily, casually and heartlessly.

The secretive way in which this was done, after the close of public submissions, is a direct result of there being no compensation for landowners who are affected by environmental conditions. This is happening again in the rezoning of land in the Southern River. The government departments, whose job it is to reserve land of conservation value, appear to have to resort to secrecy, or whatever other methods they can come up with in order to do the property owner out of the use of their property, their land values and any future expectations that they may have had for their major asset.

The imposition of Bushplan and Conservation Category Wetlands has been largely carried out without proper on-site assessment or verification, since to date these sites have been identified and mapped mainly through aerial photographs. This has led to private property being included as Bushplan and conservation wetland sites in Perth's draft Bushplan, even though they are of dubious environmental value and without scientific verification. In 17 years of residing on our property in Canning Vale, no-one ever approached us, or came onto the property to ascertain whether our property was wetland. It is not right that no proper individual consultation and on-site evaluation took place before the Conservation Category Wetlands of Bushplan sites were placed on government maps.

In the case of Conservation Category Wetlands - and there are in excess of 500 of these mapped on the Swan coastal plain, most of them probably on private land - it is unreasonable that the landowners probably still have no idea of their status and certainly will not have been approached for an on-site assessment. It is also not right that private properties that may be affected by proposed policies such as Bushplan and the revised Swan coastal plain wetlands environmental protection policy are already being refused development approval even though these policies are not yet law. It is also of great concern that the Department of Environmental Protection is seeking legal advice on whether it can override an existing town planning scheme. That was in the revised draft of the Swan coastal plains wetlands policy.

The type of wetland claimed by the Water and Rivers Commission to be present on my property was a dampland. To date, there is no environmental protection policy which gives protection to or calls for the conservation of damplands. Despite this, the local authority, together with the DEP, the Water and Rivers Commission and the Ministry for Planning went ahead and included five conservation areas in the proposed scheme amendment area with up to 50 metre

buffer zones all around without any statutory authority or environmental protection policy to base their action on. Thus the city of Gosnells will be required to pass a by-law once the scheme amendment has been approved to provide for the conservation of these areas. Only one of these areas, the Shreeve Road Reserve, is an actual swamp. Of the remaining four, two, including mine, have been disproved as conservation category in an assessment process that took months of research and fighting with government agencies to achieve.

I know that the Environmental Protection Act allows the minister to make environmental conditions 'as she sees fit'. However, I believe that the government departments are abusing their powers and using every scheme amendment as an opportunity to get their slice of free land, even though the land in question may not have been properly assessed, may not be worthy of conservation and may not be the subject of existing environmental protection policies. Similarly, conservation groups are jumping on the bandwagon and opposing developments so that they can get their desired percentage of private land under conservation. Local authorities, attracted to the opportunity to secure private land for free — because the land is vested in the local authority — and lured by funding for conservation areas, appear to be willing partners in the scheme amendment land grab game, or maybe in our case it was a deliberate attempt to devalue our properties for the benefit of the developers. In view of the fact that in our case there was already public open space proposed for the area in question, there does not seem to be any common sense operating in this process, just greed and a contempt for the existing landowners.

It has been said that landowners are not due compensation unless a pre-existing right has or is likely to be removed, and that the loss of development potential is not a consideration. In our case, our expectation was not necessarily to be able to develop our land, but we did have the same expectation as every other landowner in our area to be able to sell our property when the time came. The imposition of environmental conditions on our property, and in particular the application of buffer zones, removed what I believe was our pre-existing right to sell our property, even as a whole portion of land, as it was made almost completely without value through the decision of the Ministry for Planning to leave the conservation areas non-compensable under the scheme, despite the fact that our property was as developable as any in the area and more so than many that are now being developed.

That it was subsequently decided to reserve the conservation areas as public open space in order to provide the compensation for the affected landowners was of little consolation to us, as we had still lost the prospect of selling our property and moving on, as was our wish, and, I believe, our right. The right of landowners to the value of their land is not protected in legislation. Our land was certainly not valueless when we bought it and it is now valued at $400,000 by the Valuer General, and we pay rates accordingly. I believe that this gives us the pre-existing right to expect to sell our property for at least that amount regardless of what it is used for after we have left. I do not have a problem if it is never subdivided and is used as a park for the enjoyment of all, but I do have a serious problem with the attitude of the state government that says that we should not expect to make a profit and that making our land worthless and unmarketable without compensation is normal.

I believe that where land is to be rezoned from rural to urban and the right to remain rural is extinguished by a scheme amendment and rezoning, the right to subdivide and the expectation of subdivision potential is automatically conferred on those landowners in the scheme

amendment area. Preventing me from subdividing and reserving my land without compensation is an infringement of my private property rights. Such discrimination, where some landowners in a scheme amendment are allowed to subdivide without compensation, is unconstitutional. I have some comments on the Swan coastal plain policy. Does the committee want me to go on?

CHAIR—Carry on.

Mrs Read—The environmental protection Swans coastal plain wetlands policy 1999 is so broad in its concept that any landowner who has maintained vegetation, or is in an area that is a natural wetland, from east of Lancelin right down to Dunsborough, will be at risk of losing both their land values and tha lawful use of their property simply because they have cared for their land. An example of the scope of the new Swan coastal plains lakes policy is found on pages 6 and 7, where any attribute or function such as vegetation, fauna habitat, aesthetic qualities, soil types or beneficial use such as recreational or educational activities will be considered sufficient to warrant restrictions on private land use. Some of the values and beneficial uses may be potential rather than existing at present. Further, the 'lack of complete scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation'. Since much of the Swan coastal plain is one big wetland/dampland, including the Pinjarra plain, which has wetlands covering hundreds of square kilometres, this policy will put at risk the livelihoods and futures of many, and virtually any Western Australian landowner on the Swan coastal plain.

Once on the Wetland Atlas, or the proposed wetland register, the onus will be on the landowner to prove that they should not be subject to environmental restrictions. This will be an almost impossible task due to the broad and general scope of the criteria and the lack of the specific guidelines. Although bulletin 686 provides a method of quantifying the attributes and values of a wetland, the EPA have now recognised the limitations of this bulletin to place this land that is without water into conservation as a wetland, and to this end it is likely a new bulletin will be formulated. Even the Ramsar Convention on Wetlands of International Importance defines wetlands as 'areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt . . . '. This new environmental protection policy seeks to put any land that the EPA sees fit into conservation, even if it has no apparent water. Without specific and clear-cut criteria, this means virtually any land whatsoever on the Swan coastal plain, since the EPA states that water permanency is not indicative of a conservation value of a wetland.

Buffer zones which do not appear to have a defined legal basis and do not form part of the new environmental protection policy, but are applied anyway, can extend environmental zones such as wetlands from 25 metres to 100 metres all around, and even 200 metres of upland vegetation. This can lead to small landholdings being completely consumed by even a small conservation area, as was the case with our property. Without compensation, this means that the landowners loses everything because they will not be able to sell or use the land that they have bought in good faith. Recent media reports would suggest that it is okay to impose as little as five metres of buffer zone around an actual swamp or wetland — I am talking about Carine here — yet we had 50 metre buffer zones imposed on our land around a non-existant wetland.

Our watertable, as documented in a hydrology report was at 1.8 metres below the surface in the middle of winter. There are many much wetter properties currently being developed in our

area. Brookland Greens and The Avenues, which are now fully urbanised, were once very low-lying swampy areas, full of paperbarks and other wetland vegetation, and are much lower than our property, yet seem to have been successfully developed without conservation areas and buffer zones. Is this because that land was aquired by developers? I note that all of the conservation in our area just happened to occur only on portions of land that are still privately owned and none of it on land that had been acquired by developers, despite some of it having magnificant vegetation, and bearing peaty soils and being significantly wetter and lower than our property.

What would have been fair and reasonable, such as keeping the conservation area within the proposed public open space, and assuring that it was compensable as such, did not appear to have been considered, as the government agencies laid claim to as much of our land as they could possibly get their hands on, without any concern for an equitable result. I suspect this is because the ordinary person is an easier target and is not expected to have the knowledge or the means to fight the arbitrary decision on wetlands and buffer zones that are currently being taken, with greed outweighing moderation, and the landowner being the last on the list of considerations, if they are considered at all.

It is of great concern that the EPA's view in the revised draft is that 'the requirements of environmental protection should not be prejudiced by land tenure'. This, together with the fact that the EPA has no powers under the Environmental Protection Act to provide compensation leaves all rural and semi-rural landowners completely unprotected. I believe that it is totally against what all landowners see as their rights when they hold a land title. I also believe it is undemocratic, un-Australian, and seems more like communism when government departments appear to have more rights over private land than those who own it. It is the ultimate hypocrisy for the state government to assert that all wetlands have value, while at the same time telling landowners that their land has become valueless as a result of the presence of wetlands on their property.

In my case I was told that since we had bought a swamp, it was not worth anything. The fact that it was not a swamp and we were forced to ultimately prove this fact was irrelevant to the government departments we had to deal with, and lent veracity to a comment that even a sand hill can be a wetland if the government says it is. My neighbour's property has also been classified as a wetland, despite her property being one of the highest and dryest hills in the area. The Department of Environmental Protection stated that someone's land had to end up valueless and we should not have expected to make a profit. No land is valueless. It is worth whatever the current market says it is. It has value either for its development potential, its value as a whole, or its value to the community for conservation purposes. Whatever the case may be, it has value. If the government is not prepared to pay for the land they want to preserve, then landowners should be free to sell, develop, or use their property without environmental restrictions.

Everyone has the right to believe that property that has been bought and paid for in the normal way will continue to be an asset that can be sold or utilised as intended. The current situation has left many landowners holding property that they cannot do anything with. They cannot build their home on it, they cannot develop it, they cannot use it and no-one will buy it because the environmental restrictions make it an unviable proposition, and the government will not compensate them. It is unconscionable that this is not currently compensable. It is an infringement of private property rights with absolutely no regard or respect for land ownership

in this State. Currently, millions of dollars worth of land is tied up, deemed undevelopable, even though it is private land and was bought for a specific agricultural development, investment or rural purpose, and in the case of many self-employed people, to fund their retirement.

Everyone in our community today supports conservation. No-one — except those within the government and the conservation groups who seem to have developed an attitude that no-one owns land, it belongs to everyone — expects individuals to give up their land, their livlihood, and sometimes their only asset, to achieve conservation objectives for the whole community. This burden must not continue to fall on the individual. It is a community right to demand conservation as long as the community is prepared to share the cost. Everyone who was aware of our situation was shocked that there was no compensation to cover us. Without exception they stated 'but they cannot do that!'. Sadly, they think they can. The result is that people's lives and futures are being ruined.

The state parliament must legislate for compensation for affected landowners. This will have the following positive effects: it will make government departments and conservation groups responsible and accountable for the decisions they make. Since the land required would have to be paid for, they will need to show that it is important to the environment and does not merely fit a broad and vague criteria which is easily manipulated to suit the more zealous conservationist. Since funds would obviously be limited, land acquired on a prioritised basis for its importance and value would demonstrate to the community that what they are providing in taxpayers' dollars is being used wisely, whereas currently it is a free-for-all land grab — the emphasis being on free.

It will give landowners an incentive to care for their land by preserving vegetation, wetlands, fauna, flora and reduce salinity. This will benefit all the community and landowners will not have to live in fear of being penalised for being environmentally responsible. It should be noted that in the United States, for instance, an ecological value is being placed on land quite apart from its land or developable value, so that the conservation of land reflects its high value and important status. It will mean state government departments will be able to stop working in secret, as they have currently to virtually steal land out from under landowners before the landowners have a chance to catch on to what is going on. It will create more harmony in the community. I have witnessed and experienced the disbelief, grief, fear, stress and rage that follows the realisation that you have been conned out of your future by a dishonest system. A system that jeopardises livelihoods, breaks families, threatens the core of their existance, their land and their home and sends honest citizens on a bewildering merry-go-round of government departments that leaves them exhausted, despairing and angry because, at the end of their frustrating journey through this nightmare maze is the simple truth — the government is doing this because it can and parliament has failed to provide for the protection of its citizens. If you are not already aware of how widespread this issue has become, you most certainly will be if Bushplan, Swan coastal plain and other environmental protection policies that are in the pipeline are passed and implemented.

Should there continue to be no provision for compensation for landowners affected by environmental restrictions, as time goes on, landowners will only become aware of their status when they try to realise their asset, being their land. They will then be asking their members of parliament why they have failed to protect them from state government policies and acts which

have been allowed to pass through state parliament and become law without any thought or concern for the impact on their constituents. I note that the review of the Swan coastal plain lakes environmental protection poicy attracted comment from only two members of parliament, despite its widespread implications and its complete lack of protection for landowners. The government has rapidly kept up with community demands for environmental protection

CHAIR—Ann, I am sorry but we are having a battle with the time. Would it be possible to table the submission?

Mrs Read—Yes. However, I have one paragraph to go, is that alright?

CHAIR—Quick!

Mrs Read—The government has rapidly kept up with community demands for environmental protection but has not maintained a balance by protecting the rights or providing for compensation of affected landowners. Richard Court, in his recent correspondence to me on this issue, states that the government recognises the fundamental importance of sustaining the environment upon which the social and economic development of this State is based. If the social and economic development of this State is based on creating urban fire hazards and rubbish dumps, and stealing my backyard with no compensation, then I think we have a serious problem. I would have to ask, if it is so important to the State, then why not pay for this land?

In conclusion, I would ask the committee to urgently and seriously address this totally inequitable situation before it gets out of hand, if it has not already. The government is allowing this system to hurt ordinary people badly on a huge scale. I call on the the state government to give the departments and agencies whose job it is to protect the environment the mechanism that will allow full compensation so that the landowners of this state will no longer be regarded as mere obstacles to be overcome, or irrelevant to their agenda, and are accorded the respect they deserve as partners in this process. We did not work all our lives to gain title to our land so that it can be stolen from us in the name of environmental protection. We did not ask for our area to be rezoned to urban; it was imposed upon us. I believe that in denying some landowners equal protection of the law against discrimination in a scheme amendment contravenes our constitutional rights. A government that is democratic whose philosophies support family values and individual enterprise, openness and accountability can and must do better. Thank you for listening.

CHAIR—Well done, Ann. Thank you very much. I should record that Ann is the principal petitioner in this case. It is great that you were able to make that presentation. It was very valuable. I am afraid that we are fast running out of time. Do any of the other committee members have any urgent questions?

Hon DERRICK TOMLINSON—When did you purchase your three and three quarter acre of land?

Mrs Read—In 1981.

Hon DERRICK TOMLINSON—What was its zoning then?

Mrs Read—Rural.

Hon DERRICK TOMLINSON—What is its zoning now?

Mrs Read—It is in the process of being rezoned to urban.

Hon DERRICK TOMLINSON—When did you learn about the wetland classification?

Mrs Read—I learnt of the wetland classification in July 1999.

Hon DERRICK TOMLINSON—How did you learn about that?

Mrs Read—Largely by accident. We were not notified.

Hon DERRICK TOMLINSON—You were not notified. Finally, what sum of money would you regard as reasonable compensation for your land?

Mrs Read—I would regard current market value as reasonable compensation for my land.

Hon DERRICK TOMLINSON—Current market value as rural or residential?

Mrs Read—What I am trying to say is whatever everyone else around the area is getting. They are being bought out by developers.

Hon DERRICK TOMLINSON—Thank you.

CHAIR—Thank you all. Ann, if there is anything you would like to table we would welcome it. We would pleased to have any maps that refer to your property. If anyone wishes to submit anything in writing to the committee, please feel free to do so. Thank you very much. We have had a fair bit to deal with and I am sorry that we have to cut you off but time has caught up with us.

Mr Brown—Mr Chairman, what process will result from today's comments?

CHAIR—This is the Constitutional Affairs Committee. We handle petitions, which is why we are looking at this. In due course we will consider it. In most cases we report it to the House. There are exceptions but we will not worry about those because it is almost certain that we will. It is not a government committee, it is a parliamentary committee. Both major parties are represented on it. It is usual that we present one report. It is also possible that a minority report can be prepared. When it is tabled in the House, the normal motion is that the report be noted. That means that it is then debated and discussed in the House. It does not force the government to do anything and we have not got the power to do that, but it does give the matter a public airing. If we make reccomendations, which we almost certainly will, the minister is required to reply to those recommendations. If we do not agree, the committee pursues it further and hopefully we get at least a compromise out of the situation.

Mrs Brown—What sort of time frame do you put on that?

CHAIR—We do not like to put a time frame on it, because how long is a piece of string? An election is coming up in the next 12 months and we will be doing our very best to report before then.

Committee adjourned at 3.30 p.m.